



WESTERN  
GOVERNORS'  
ASSOCIATION

**Western Governors' Association  
Policy Resolution 2014 - 07**

***Bonding for Mine Reclamation***

**A. BACKGROUND**

1. All Western states in which mining occurs have staff dedicated to ensuring that ongoing mine operations develop and follow appropriate reclamation plans.
2. An important component of a state's oversight of mine reclamation is the requirement that mining companies provide financial assurances in a form and amount sufficient to fund required reclamation if, for some reason, the company itself fails to do so. These types of financial assurances, often referred to generically as "bonding," protect the public from having to finance reclamation and closure if the company goes out of business, or fails to meet its reclamation obligation.
3. All Western states have developed regulatory bonding programs to evaluate and approve the financial assurances required of mining companies. The states have developed the staff and expertise necessary to calculate the appropriate amount of the bonds, based on the unique circumstances of each mining operation, as well as to make informed predictions of how the real value of current financial assurance may change over the life of the mine, and even post-closure.
4. Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9608(b), requires EPA to promulgate financial responsibility requirements for industrial facilities that take into account the risks associated with their use and disposal of hazardous substances. After the Sierra Club sued EPA for failing to timely comply with this section of CERCLA, a federal District Court in California ordered EPA to do so.<sup>1</sup>
5. In response to the Court's ruling, EPA announced in July, 2009 that it had selected hard-rock mining as the first industry sector for which it would undertake an analysis of whether federal bonding requirements under CERCLA Sec. 108<sup>2</sup> were needed.
6. Since EPA's 2009 announcement, Western Governors have expressed concern that any bonding requirements that EPA may develop for the hard-rock mining industry could be duplicative of state requirements, and could even pre-empt them entirely. The Governors have also questioned whether EPA has the resources to implement

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1 See Sierra Club v. Johnson, 2009 WL 2413094 (N.D. Cal. 2009)

2 See 74 Fed. Reg. 37213 (July 28, 2009).

reclamation bonding for hard-rock mines, since bond calculations usually reflect very site-specific reclamation needs, tasks and costs.

7. State mining agencies provided detailed comments to EPA in August 2011 on the structure and extent of each state's hard rock mining financial assurance requirements. EPA has yet to indicate if or what problems or gaps the agency has found in existing state requirements. Recently, EPA indicated that a rulemaking on this issue is not likely for at least another year.

## **B. GOVERNORS' POLICY STATEMENT**

1. Because mine reclamation is needed primarily to protect adjacent waters, it is both appropriate and consistent with Congressional intent to recognize the states' lead and primary role in regulating water related impacts of mine reclamation, including the associated bonding. See Clean Water Act, Sec. 101(b), 33 U.S.C. § 1251(b).
2. Western states have a proven track record in regulating mine reclamation in the modern era -- including for hard rock mines -- having developed appropriate statutory and regulatory controls, and are dedicating resources and staff to ensure responsible industry oversight.
3. In contrast, EPA currently has no staff dedicated to oversight of mine reclamation, or to the approval of bonding associated with mine reclamation. As a consequence, if EPA proceeds to promulgate bonding requirements for the hard-rock mining industry under CERCLA Sec. 108, it will have to create a new federal regulatory program -- an unnecessary investment of federal funds -- at a time when the federal government is trying to get its fiscal house in order.
4. Western Governors believe that states currently have financial responsibility programs in place that are working well, and that functional programs should not be duplicated or pre-empted by any program developed by EPA pursuant to Section 108(b) of CERCLA.

## **C. GOVERNORS' MANAGEMENT DIRECTIVES**

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.